

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NYLYSHA STARVION BELAFON
ARADON, et al.,

Plaintiff,

v.

SNOHOMISH COUNTY, et al.,

Defendant.

CASE NO. 2:20-CV-1665-RSM-DWC

ORDER GRANTING MOTION TO
APPOINT GUARDIAN AD LITEM

The District Court referred this case to United States Magistrate Judge David W. Christel. This matter comes before the Court on Plaintiffs' Motion for Appointment of a Litigation Guardian Ad Litem (Dkt. 40).

BACKGROUND

On October 16, 2020, Plaintiffs filed a complaint in King County Superior Court alleging causes of action for negligent administration of the Snohomish County Parental Dependency and Termination Program, negligent investigation, negligent infliction of mental distress, violation of the Fourteenth Amendment, violation of the Fourth Amendment, abuse of process, and outrage. Dkt. 1-1.

1 On November 12, 2020, Defendants Snohomish County, Snohomish County Superior
2 Court, and the Snohomish County Volunteer Guardian Ad Litem Program (County Defendants),
3 together with Sara Di Vittorio and John Doe Di Vittorio (Di Vittorio Defendants), filed a notice
4 of removal. Dkt. 1.

5 In December 2020, Plaintiffs moved to remand the case to state court. Dkt. 20, 22.

6 On February 16, 2021, this Court entered a Report and Recommendation denying
7 Plaintiff's motion to remand (Dkt. 30), and on March 22, 2021, the Honorable Ricardo S.
8 Martinez adopted it (Dkt. 34).

9 On July 16, 2021, Plaintiffs filed the pending Motion for Appointment of a Litigation
10 Guardian Ad Litem. Dkt. 40. The Court ordered Respondents to file a response, which they did
11 on August 9, 2021, indicating that do not oppose the appointment. Dkt. 43. Plaintiff's also filed a
12 reply. Dkt. 44.

13 STANDARD

14 "The court must appoint a guardian ad litem—or issue another appropriate order—to
15 protect a minor or incompetent person who is unrepresented in an action." Federal Rule of Civil
16 Procedure (Rule) 17(c)(2). "[Rule] 17(c) requires a court to take whatever measures it deems
17 proper to protect an incompetent person during litigation." *U.S. v. 30.64 Acres of Land, More or*
18 *Less, Situated in Klickitat County, State of Wash.*, 795 F.2d 796, 805 (9th Cir.1986). The Ninth
19 Circuit has established that "[i]f an infant or incompetent person is unrepresented, the court
20 should not enter a judgment which operates as a judgment on the merits without complying with
21 Rule 17(c)." *Krain v. Smallwood*, 880 F.2d 1119, 1121 (9th Cir. 1989); *Allen v. Calderon*, 408
22 F.3d 1150, 1153–54 (9th Cir. 2005) ("Because there was sufficient evidence of Allen's
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1 incompetence, the district court abused its discretion in dismissing the petition for failure to
2 prosecute without first holding a competency hearing or otherwise considering his claim.”).

3 “Capacity to sue or be sued is determined ... for an individual who is not acting in a
4 representative capacity, by the law of the individual's domicile.” Rule 17(b)(1). In Washington, a
5 guardian ad litem should be appointed “when the court is reasonably convinced that the litigant
6 is not competent to understand the significance of legal proceedings and the effect of such
7 proceedings on the litigant's best interests.” *Graham v. Graham*, 40 Wash. 2d 64, 66–67 (1952).

8 Pursuant to RCWA 4.08.060:

9 When an incapacitated person is a party to an action in the superior courts he or she
10 shall appear by guardian, or if he or she has no guardian, or in the opinion of the
11 court the guardian is an improper person, the court shall appoint one to act as
12 guardian ad litem. Said guardian shall be appointed as follows:

13 (1) When the incapacitated person is plaintiff, upon the application of a relative or
14 friend of the incapacitated person.

15 Generally, the role of the guardian ad litem in a federal lawsuit is to protect the interests
16 of the minor. Rule 17(c). A district court “maintains a continuing obligation to supervise the
17 guardian ad litem's work.” *Neilson v. Colgate–Palmolive Co.*, 199 F.3d 642, 652 (2nd Cir. 1999)
18 (citing *Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978); *Noe v. True*, 507 F.2d 9, 12
19 (6th Cir. 1974)). Thus, a court must independently investigate and evaluate any compromise or
20 settlement of a minor's claims to assure itself that the minor's interests are protected, even if the
21 settlement has been recommended or negotiated by the minor's parent or guardian ad litem.
22 *Salmeron v. U.S.*, 724 F.2d 1357, 1363 (9th Cir. 1983).

23 The district court may remove the guardian ad litem at any time. *Hull by Hull v. United*
24 *States*, 53 F.3d 1125, 1127 n. 1 (10th Cir. 1995) (noting that parties seeking to challenge the

1 decisions of a guardian ad litem have a remedy of applying to the court to have the guardian ad
2 litem removed or to have another guardian ad litem appointed).

3 DISCUSSION

4 Plaintiffs request the appointment of Jo-Hanna Reed as the Litigation Guardian Ad Litem
5 for A.H., a minor child who was removed from her mother (also a Plaintiff in this case) four days
6 after birth, and placed into the dependency and termination program at the Snohomish County
7 Superior Court. Dkt. 40 at 2.

8 According to Plaintiffs, A.H., who is now eight years old, remains in foster care. *Id.* at 2-
9 3. Plaintiffs also represent to this Court that Jo-Hanna Reed is willing and able to serve as A.H.'s
10 Litigation Guardian Ad Litem. *Id.* at 3. It appears Ms. Reed is an attorney licensed to practice in
11 the State of Washington with substantial experience serving as a Guardian Ad Litem for
12 incapacitated persons, including minor children, and that she is on the approved "SGAL list" in
13 both King and Snohomish County Superior Court. Dkt. 40 at 3-4, 7.

14 Based on these representations, the Court is satisfied that A.H. is not competent to
15 understand the significance of the legal proceedings in this case, and therefore that appointment
16 of a Litigation Guardian Ad Litem is in her best interests. The Court further finds that Ms. Reed
17 is qualified and willing to execute the responsibilities of Litigation Guardian Ad Litem to A.H.

18 Plaintiffs also request that the Court authorize Plaintiffs' counsel, Patrick A. Trudell and
19 Robert Scott Bowen, to continue to appear as counsel on behalf of A.H. Dkt. 40-1 at 3. However,
20 the Court declines to do so, as this decision must be made by Ms. Reed. *See Fong Sik Leung v.*
21 *Dulles*, 226 F.2d 74 (9th Cir. 1955)(guardian ad litem has authority to engage counsel, file suit
22 and prosecute, control and direct litigation, and as officer of the court a guardian ad litem has full
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1 responsibility to assist the court to secure the just, speedy and inexpensive determination of
2 action).

3 CONCLUSION

4 Plaintiff's unopposed motion for the appointment of a guardian ad litem pursuant to
5 RCW 4.08.060 (Dkt. 40) and for Jo-Hanna Reed to serve as guardian ad litem is hereby
6 GRANTED.

7 Dated this 11th day of August, 2021.

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10 David W. Christel
United States Magistrate Judge
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